

EXHIBIT 3

continued

1 *Pat Orsaia*

2 rehired at Lawrence; isn't that right?

3 A. Yes.

4 Q. Had she been terminated for any
5 reason, she would not have been eligible to be
6 rehired; is that right?

7 A. That is not necessarily correct, no.

8 Q. Why isn't that necessarily correct?

9 A. Well, there could be a situation
10 where someone is hired into a particular position
11 and perhaps during the probationary period
12 resigns, or is told that it is not a good fit by
13 the organization and leaves, and then sometime
14 later, comes back and applies for a job, as I
15 said, having gotten different credentials, a
16 different job, a different situation. It's
17 possible the person could be rehired.

18 Q. Has that happened in Lawrence?

19 A. I can't say for certain if it has
20 happened or not happened. I'm speaking more
21 toward the philosophy of what the rehire practice
22 would be.

23 Q. Going back to your communication
24 with Ms. Magone after the first time following
25 this first meeting on September 28th, with

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Ms. Newmark and Ms. Magone, what else, if anything, did she say concerning Ms. Newmark?

A. Ms. Magone told me that she was preparing the performance-evaluation documentation that would be delivered to Ms. Newmark during the separation discussion.

Q. Anything else that was said by her that you can recall?

A. Not that I recall at this time.

Q. What, if anything, as you sit here today -- you said "at this time."

Are there any documents you can use to refresh your recollection?

A. No.

Q. Did you reduce anything that Ms. Magone told you during this time, in writing?

A. No.

Q. What, if anything, did you say to Ms. Magone?

A. As I have already stated, we talked about the details of the performance concerns.

Q. What did you say? Not what you both said. What did you say, specifically, in words or substance?

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2 A. I asked her to provide me with the
3 specific dates for the attendance, the unplanned
4 absences. And she did.

5 I asked her to tell me about the
6 performance concerns. And she did.

7 I asked some clarifying questions
8 during our discussion of the performance
9 concerns.

10 I stated to Cathy that, as Ms.
11 Newmark was in her probationary period, as per
12 our policy, either Ms. Newmark or Lawrence
13 Hospital Center could decide to separate
14 employment.

15 I asked Cathy, what would be a
16 convenient time to schedule Ms. Newmark's
17 separation discussion. I asked her about
18 Ms. Newmark's work schedule for that day, as we
19 thought it would be best to, if possible,
20 schedule the separation discussion toward the end
21 of her shift.

22 I asked Ms. Magone if she had had
23 any response from Ms. Newmark, to Ms. Magone's
24 e-mail to Ms. Newmark, which, again, addressed
25 Ms. Magone's intent and use of the word "young."

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2 reconcile the point?

3 A. The fact that she was being
4 separated from employment, had nothing to do with
5 the alleged comment, using the word "young."

6 Q. And that is based on what Cathy
7 Magone told you; isn't that right - that it had
8 nothing to do with that?

9 A. It's based on the documentation in
10 the specific detail that the manager gave me
11 regarding her reasons for separating employment.

12 Q. Who is the manager again?

13 A. Cathy Magone.

14 Q. And who did Ms. Newmark complain
15 about?

16 A. She complained about an alleged
17 comment from Cathy Magone.

18 Q. So, you're saying, with respect to
19 Magone, these are not allegations; but with
20 respect to Ms. Newmark's alleged comment --

21 A. I'm not sure what you mean.

22 Q. When you characterize what
23 Ms. Magone tells you, it's a statement of fact.
24 When you characterize what Ms. Newmark related to
25 you what Ms. Magone told her, you use the word

1 *Pat Orsaia*

2 "alleged."

3 why is there a difference?

4 A. The information that was provided to
5 me by Cathy Magone as to the rationale behind
6 Ms. Newmark not successfully completing her
7 probation, was documented information. That is
8 why I asked Ms. Magone for the dates of unplanned
9 absence, which she took right off her time sheets
10 and showed me, and the information about the
11 complaint about Ms. Newmark's performance, the
12 lack of progress on the project, et cetera.

13 Q. What was documented? What did you
14 see that was documented?

15 A. Ms. Magone had notes of the
16 complaints from the other case managers that she
17 shared with me.

18 Q. She had notes?

19 A. Yes.

20 Q. Did you see any documents or
21 complaints from those case managers?

22 A. Yes. I believe there were one or
23 two, at least, that were actually maybe e-mails
24 to Cathy Magone, expressing concern over
25 Ms. Newmark's lack of responsiveness.

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2 Q. Well, did anyone seek to inquire of
3 Ms. Newmark's position on those points?

4 A. You would have to ask Ms. Magone
5 that.

6 Q. I'm asking, did you?

7 A. Not that I know of.

8 Q. Did you ask Ms. Magone whether she
9 did?

10 A. I asked Ms. Magone if she had
11 followed up with Carole after receiving the
12 various complaints from case managers and others.

13 And she said, yes.

14 Q. She did say, yes?

15 A. Yes.

16 Q. Did you communicate with Ms. Magone
17 at any other time, apart from what you have
18 testified to, concerning Ms. Newmark?

19 A. On the date of the separation
20 discussion, I believe I contacted Cathy to be
21 sure that Carole was actually at work that day
22 and our meeting was still planned for the same
23 time.

24 Q. Do you know who communicated with
25 Ms. Newmark about the meeting? Was it you, or

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2 Ms. Magone, or someone else?

3 A. It was not me.

4 Q. Where did the meeting take place?

5 A. In my office.

6 Q. What time?

7 A. I don't recall.

8 Q. Who was present there?

9 A. Cathy Magone, and Carole Newmark,
10 and myself.

11 Q. Who spoke during this meeting first?

12 A. To the best of my recall, I spoke
13 first.

14 Q. What did you say, in words or
15 substance?

16 A. I stated to Carole that we were
17 meeting because Cathy had ongoing concerns about
18 her attendance and performance, and then I turned
19 the conversation over to Ms. Magone, who provided
20 the details.

21 Q. What did she, Ms. Magone, say, in
22 words or substance?

23 A. She had the prepared probationary
24 performance-evaluation document with her, which
25 had already been completed and signed by

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Ms. Magone. She went through it, although briefly, with Ms. Newmark.

Cathy advised Ms. Newmark that she had not successfully completed her probation and that we were separating employment.

And to the best of my recall at that point, Carole was not interested in going through the document or, you know, reading through it, or taking the time to do that.

It was my sense that Carole wanted the meeting to end as quickly as possible after she knew that it was a separation discussion.

Q. What, if anything, did Ms. Newmark say?

A. I don't recall her saying very much. I recall that she understood where the conversation was going. I believe she said, "I understand I'm being separated from employment."

I offered her at that point the option of submitting a letter of resignation. And I told Ms. Newmark that we were going to separate employment, but she did have a choice about whether it would officially be on the record as a termination of employment or

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2 resignation.

3 I pointed out to her that, should
4 she decide to resign, that Lawrence Hospital
5 Center would not stand in the way of any claim
6 for unemployment insurance that she might put
7 forth and that would otherwise be determined by
8 the Department of Labor as being a legitimate
9 claim.

10 And I told her that in terms of any
11 prospective employment; that, as was our
12 practice, we'll only share dates of employment
13 and job title.

14 And I offered her the opportunity to
15 decide whether she wanted it to be a resignation
16 as opposed to a termination. I offered her the
17 opportunity to make that determination -- take
18 overnight to make that determination.

19 And we agreed that she would contact
20 me the next day with her decision.

21 Q. Was there anything else discussed at
22 the meeting, apart from what you have-already
23 testified to?

24 A. Yes. I advised Ms. Newmark that,
25 when our meeting concluded, that Cathy would

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A. Ms. Newmark's -- Ms. Newmark stated, her allegation to me, that Ms. Magone had used the word "young" when explaining to her why Nicole was assigned to the palliative-care project.

Q. I'm going to direct your attention to what is marked as Plaintiff's Exhibit 5. Here, I'm going to show you the formal exhibit. *(Handing)*

Do you see paragraph three?

A. I do.

Q. She made that allegation in your presence, didn't she, that "Nicole was younger and could handle the job better than I could," in reference to Ms. Newmark; is that right?

MR. KEIL: I'm going to object. Your question seems to be ambiguous. Are you asking the witness --

MS. NICAJ: I'm going to rephrase the question.

Please don't make a speaking objection, okay?

Q. Did Ms. Newmark state to you at any time, that Ms. Magone told her Nicole was younger

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and could handle the job better than she could,
in words or substance?

A. That is not a direct quote that I
recall hearing from Ms. Newmark.

Q. Well, did she ever write that to
you, for example, like Plaintiff's Exhibit 5?

MR. KEIL: Object. The
document speaks for itself.

You may answer if you can.

A. Plaintiff's 5, number three says,
when we went over the issue --

Q. I'm asking you a question.

A. You're asking me what the document
says. I'm reading it back.

Q. Did she; yes or no?

A. Please rephrase. Did who, what?

Q. Did Ms. Newmark ever advise you,
whether it's in writing, or verbally, or in
person, or in any manner, that Ms. Magone told
her, "Nicole was younger and could handle the job
better than I could"?

A. Not in those exact words, she did
not.

Q. In writing?

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A. What Ms. Newmark says in this document --

Q. I'm asking --

A. -- that Cathy denied that she said that, quote, "Nicole was younger and could handle the job better than I could."

Q. Did she ever advise you, yes or no, that Ms. Magone told her that Nicole was young and could handle -- was younger and could handle the job better than she could?

A. No.

Q. She never did. Okay.

Did Ms. Magone ever, at the September 29th, meeting, ever state, in words or substance, Nicole was young and could take things in like a sponge?

MR. KEIL: I object as to form.

Answer if you can.

A. I do not recall that as a direct quote from Cathy Magone.

Q. You see how there is a quote that Ms. Newmark wrote? She stated that she did say that Nicole was quote, "young and could take

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2 things in like a sponge." Do you see that?

3 A. Yes, I do.

4 Q. Do you dispute that's what
5 Ms. Magone said at the September 28th meeting?

6 A. I do.

7 Q. You do dispute that?

8 A. Yes.

9 Q. Did you submit your dispute or --
10 withdrawn.

11 Did you reply to Ms. Newmark,
12 disputing her recollection of what Ms. Magone
13 said at the meeting?

14 A. No.

15 Q. Have there been claims of
16 discrimination brought against Lawrence Hospital
17 by other employees?

18 MR. KEIL: Over what period
19 of time?

20 MS. NICAJ: Since her
21 employment, to the time she ceased
22 employment.

23 A. For the almost five years that I was
24 employed at Lawrence Hospital?

25 Q. Yes.

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2 her e-mail"? What e-mail is she referring to?

3 A. I think Cathy is referring to the
4 e-mail she sent Carole, which again attempted to
5 clarify, in writing, what went into Cathy's
6 decision to assign Nicole to the palliative-care
7 program.

8 Q. And you asked her for a -- to find
9 out when, if she received any response from
10 Ms. Newmark?

11 A. I asked Cathy if her e-mail had
12 prompted any further dialogue with Carole.

13 Q. October 5th, the date in which
14 Ms. Magone e-mailed you, is the date in which
15 Ms. Newmark was terminated; isn't that right?

16 A. Yes.

17 Q. To your knowledge, did anything
18 occur from September 29th, 2006, until October
19 5th, 2006, concerning Ms. Newmark's performance -
20 anything new; additional absences, new incidents?

21 A. I do recall Cathy told me that she
22 became aware during that time period, through
23 some other source, that there had been some
24 communication to Ms. Newmark from the registered
25 nurse assigned to the palliative-care project,

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and that Cathy was concerned that Carole had not brought Cathy into the loop about that.

Q. I'm sorry. I'm not -- what are you referring to? What communication?

A. I don't know exactly what the nature of the communication was. Cathy told me that she had already stated to me and to Carole that Cathy was concerned that Carole had not made any progress to date on the project that she had been assigned to, the mental-health project. I'll call it that for lack --

Q.- You knew that already; you had known that already?

A. Yes, I knew that already.

Q. What are you referring to about the palliative care?

A. I'm not referring to palliative care.

Q. I'm sorry; I misheard you, then. What palliative-care project are you referring to?

A. I need to clarify that. I misspoke. I meant the mental-health project.

Q. You knew about that previous to

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2 that; right - about the issue with the mental-
3 health project you testified to?

4 A. I knew that Cathy had performance
5 concerns in terms of Carole not making any
6 progress on the mental-health program.

7 Q. Right.

8 A. In response to your question - what,
9 if anything, new from a performance perspective
10 was brought to my attention during that time
11 period - what I'm saying is that during that time
12 period, Cathy told me that she was even more
13 concerned about Carole's lack of progress in
14 regards to the mental-health project, because she
15 had become aware that, in fact, Carole didn't
16 share with her that the nurse, who was supposed
17 to be working with Carole on this and had
18 attended the training with her on the mental-
19 health project, had communicated with Carole
20 about the project. And Carole failed to tell
21 Cathy that there had been this communication.

22 Q. So, there had been some progress
23 or --

24 A. No; not only had there been no
25 progress, Carole, knowing that Cathy was keenly

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interested in seeing progress and had prompted Carole about it, Carole received some communication from the RN she was supposed to be working with on the project and did not go to Cathy to give her an update, and Cathy was concerned about that.

Q. So, the fact that she didn't relay a communication she had with a nurse, she was concerned about?

A. Yes, yes. Cathy was concerned that Carole did not relay to Cathy that there had been some communication or some update regarding the project. I don't know the specifics of it.

Q. Do you know when Carole Newmark communicated with that nurse?

A. I don't.

Q. Do you know what the nurse's name is?

A. No.

Q. Do you know where she works or where she is assigned to?

A. No, I don't.

Q. So, in fact, there had been communications concerning the mental-health

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department with Ms. Newmark and the nurse, and I just want to clarify something: You're saying that Ms. Magone had an issue because Ms. Newmark had been communicating with the nurse and hadn't relayed that communication to her?

A. Not exactly. I'm saying that Ms. Magone relayed to me that she was concerned because it came to her attention that the nurse had initiated communication with Carole Newmark about the project, and Carole had not updated her director about that.

Q. About the fact that the nurse called her about the project?

A. I don't know if it was a call, an e-mail, written correspondence. I don't know what the nature of the communication was or what the specifics of it were.

Q. And that was her concern?

A. That was her concern.

Q. Anything else? Was there anything else from September 28th, until October 5th -- withdrawn.

When did Ms. Magone decide to terminate Ms. Newmark's employment?

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A. I don't know exactly.

Q. When did she communicate that to you?

A. Sometime between September 28th and October 5th.

Q. Apart from -- withdrawn.
Didn't she communicate with you sooner than October 5th?

A. She communicated that she had concerns about Carole's attendance and performance prior to September 28th.

Q. When did she do so for the first time, to you?

A. I don't recall exactly.

Q. From September 28th through October 5th, any other communications with Ms. Magone about Ms. Newmark's performance, any that you have not testified to?

A. No.

Q. Any other concerns?

A. No.

Q. Have you communicated with anyone concerning your deposition here today, apart from Mr. Keil?

1 *Pat Orsaia*

2 A. About the deposition?

3 Q. About the deposition.

4 A. No.

5 Q. Have you been in contact with any
6 former employees of Lawrence Hospital since you
7 left, apart from the two communications you have
8 had with Ms. Magone?

9 A. Yes; I have communicated with some
10 of my former colleagues at Lawrence Hospital
11 Center.

12 Q. With whom?

13 A. With members of the human resources
14 department; with the former vice-president of
15 human resources who left Lawrence, before I did;
16 I have communicated with her. I spoke with the
17 nurse manager at the ER at the time when I had a
18 friend who was a patient at Lawrence. I spoke
19 with another former member of the human resources
20 department who left Lawrence before I did. I
21 spoke with people at the switchboard.

22 That's all I can recall.

23 Q. Do you know whether -- how long the
24 probationary period for Ms. Newmark's employment
25 is?

1 *Pat Orsaia*

2 A. Yes.

3 Q. Or was?

4 A. Yes.

5 Q. How long?

6 A. Six months.

7 Q. Do you know when her date of hire
8 was?

9 A. I don't know the precise date, no.

10 Q. Do you know whether she was hired on
11 or about March 20th, 2006?

12 A. That sounds correct.

13 Q. And she was fired after that six-
14 month probationary period?

15 A. Her probationary period had been
16 extended.

17 Q. By whom?

18 A. By her department director, as per
19 policy.

20 Q. Was it required that she -- when you
21 say "per policy," what policy are you referring
22 to?

23 A. The policy is called Probationary
24 Periods. It's a human resources policy.

25 Q. What does it say, in words or

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substance, the policy?

A. It says that the probationary period for exempt-level employees is six months. It says the probationary period for non-exempt employees is three months. It says that at the department manager's discretion, probation can be extended for a period of up to three months. It says that the probationary period is meant to introduce the individual to the organization, and vice versa. And that at any time during the probation, either party can determine that they do not want to continue the employment relationship.

Q. Does that require approval from anyone to extend the probationary period?

A. I think it says -- the policy says it's with discussion with human resources.

Q. Discussion or approval?

A. I don't know. You have the policy in front of you. Maybe you can tell me what it says - discussion or approval.

Q. To your knowledge, as the director of HR, are there any requirements that the head of a department needs the approval of the HR department?

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2 A. Are there any occasions in which --

3 Q. No. Does it have to be approved
4 by --

5 A. Does what have to be approved?

6 Q. The probationary extension period.

7 A. The actual practice is that any time
8 a department leader is recommending that a
9 probationary period be extended, there is a
10 discussion with human resources.

11 Q. Is that discussion anywhere in
12 writing about the extension of a probationary
13 period of an employee?

14 A. Not necessarily.

15 Q. Was that done in Ms. Newmark's case?

16 A. Yes.

17 Q. Did you submit anything in writing,
18 extending her probationary period?

19 A. Did I? No.

20 Q. Did Ms. Magone?

21 A. It would have been Ms. Magone's
22 responsibility to communicate the extension for
23 Ms. Newmark. Which, as far as I know, she did.

24 Q. Did Ms. Magone send anything to you
25 in writing, which requested an extension of the

1 *Pat Orsaia*

2 probationary period?

3 A. Well, she would not have requested
4 it.

5 Q. Did she?

6 A. She would have discussed it with me.

7 Q. Did she submit anything in writing
8 requesting an extension of probation?

9 A. No.

10 Q. Did you submit anything in writing
11 approving an extension of a probationary period?

12 A. No.

13 Q. Did Ms. Magone ever recommend
14 Ms. Newmark's termination in writing?

15 A. No.

16 Q. Do you know if there are any
17 policies at Lawrence concerning that?

18 A. The policy suggests that any
19 decision to terminate employment, would be
20 discussed with human resources. And there is a
21 policy, I believe, on termination, that states
22 that the person who can approve terminations, is
23 the vice-president of human resources or her
24 designee.

25 Q. I'm going to show you what was

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previously marked as Plaintiff's Exhibit 21, for identification.

I would like to direct your attention to Plaintiff's Exhibit 1, N425, directing your attention to 4.3, Paragraph 4.3: "During the last week of the probationary period, the supervisor will conduct a performance-review discussion with the employee."

Do you see that?

A. Yes.

Q. Do you know whether Ms. Magone, the last week before the probationary period, the original probationary period for Ms. Newmark ended, had that meeting with her?

A. Well, the probationary period being extended, I don't know that she did or didn't, but I don't believe that is the scenario that is discussed --

Q. I'm asking you --

A. -- in the policy.

Q. I'm asking you a question: Do you know whether Ms. Magone met with Ms. Newmark a week prior to the original probationary period ending, to discuss her performance?

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A. I don't know that.

Q. I'm going to direct your attention to 4.5, of the same page. It says, "The supervisor may recommend termination of employment at any time during the probationary period. This recommendation must be submitted in writing to human resources and the department head."

Did Ms. Magone ever submit her recommendation prior to the termination in writing?

A. No, but she is the department head.

Q. I understand, but this says this recommendation must be submitted in writing to human resources. I'm asking --

A. This is referencing what the supervisor of the department is supposed to do at the supervisory level.

Q. I'm asking you: Did Ms. Magone submit a request, a recommendation for termination to you prior to Ms. Newmark's termination?

A. Not in writing, no.

Q. Apart from Ms. Magone, did you